

## UTAH ADVANCE DIRECTIVE LAW

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### *Utah's Advance Directives*

- A. ***Living Will*** (Personal Choice and Living Will Act, Utah Probate Code, Section 75-2-1104)
- B. ***Special Power of Attorney for Health Care*** (Personal Choice and Living Will Act, Utah Probate Code, Section 75-2-1106)
- C. ***Medical Treatment Plan*** (Personal Choice and Living Will Act, Utah Probate Code, Section 75-2-1105)
- D. ***EMS/DNR*** (Personal Choice and Living Will Act, Utah Probate Code, Section 75-2-1105.5 and Utah Administrative Code R426-100)
- E. ***POLST or the Transferable Physician Order for Life-Sustaining Treatment*** (Utah Administrative Code R432-31)
- F. ***Declaration for Mental Health Treatment Form*** (Utah Code, Section 62A-15-1104)
- G. ***Uniform Anatomical Gift Act*** (Utah Code, Sections 26-28-2 to 26-28-12)

### **A. Living Will**

- *Who can make one?* Competent adult.
- *Is there a form?* Yes, Utah law requires a living will to follow substantially the form in the Personal Choice and Living Will Act.
- *What does the form require?* The person completing the living will must complete the form, date and sign it before two witnesses, and the two witnesses must sign it. The witnesses cannot be related by blood or marriage to the person, cannot be providing health care to the person, cannot be an heir of the person.
- *Can the form be changed, amended, or revoked?* Yes, at any time the person is capable of doing so. An oral revocation is sufficient if the person is currently capable of giving medical directions to health care providers.
- *Where should the form be kept?* The person should keep the original in a safe but accessible place. Copies should be given to health care facilities upon admission, to attending physicians, and to trusted friends and relatives.
- *When does the form go into effect?* Upon written certification by two physicians who have physically examined the person and found the person to be either in a persistent vegetative state or in a terminal condition.
- *Can anyone override a valid living will?* Yes. An agent appointed under a special power of attorney for health care has the legal authority to override any previously executed advance directive. While not entirely clear under Utah law, a guardian who has the authority to make health care decisions can most likely legally override a valid living will. However, so long as the person is capable of giving current directions to health care providers, then the wishes of that person must be followed.
- *Is a living will made in another state valid in Utah?* Yes.

### **B. Special Power of Attorney for Health Care**

- *Who can make one?* Competent adult.
- *Is there a form?* Yes, Utah law requires a special power of attorney to follow substantially the form in the Personal Choice and Living Will Act.
- *What does the form require?* The person completing the special power of attorney must complete the form, designate an agent, and date and sign it before a notary public. No witnesses are required.
- *Can the form be changed, amended, or revoked?* Yes, at any time the person is capable of doing so. An oral revocation is sufficient if the person is currently capable of giving medical directions to health care providers.

- *Where should the form be kept?* The person should keep the original in a safe but accessible place. Copies should be given to health care facilities upon admission, to attending physicians, and to the appointed agent.
- *When does the form go into effect?* When health care providers, usually the attending physician, determines that the person is no longer capable of giving current directions regarding medical treatment.
- *Can anyone override a valid special power of attorney?* Probably not. Under Utah law, an appointed agent has first priority as a proxy health care decision maker. However, so long as the person is capable of giving current directions to health care providers, then the wishes of that person must be followed.
- *Is a health care power of attorney made in another state valid in Utah?* Yes.

### **C. Medical Treatment Plan**

- *Who can make one?* Competent adult or legal proxy and attending physician.
- *Is there a form?* Yes, Utah law requires a medical treatment plan to follow substantially the form in the Personal Choice and Living Will Act.
- *What does the form require?* The person completing the medical treatment plan must complete the form, date and sign it before two witnesses, and the two witnesses must sign it. The witnesses cannot be related by blood or marriage to the person, cannot be providing health care to the person, cannot be an heir of the person. In addition, the treating physician must complete the form by indicating the treatment plan agreed upon and signing and dating it. If the person is not capable, according to the physician, of giving current medical directions, then the person's proxy may complete the plan together with the attending physician. Utah law recognizes the following as legal proxy decision makers in the following order:
  - An attorney in fact;
  - Any previously appointed legal guardian of the declarant;
  - The person's spouse if not legally separated;
  - The parents of surviving parent;
  - The person's child 18 years of age or older, or if the person has more than one child, by a majority of the children 18 years of age or older who are reasonably available for consultation upon good faith efforts to secure participation of all those children;
  - By the declarant's nearest reasonably available living relative 18 years of age or older if the declarant has no parent or child living;
  - By a legal guardian appointed for the purposes of this section.

- *Can the form be changed, amended, or revoked?* Yes, at any time the person or proxy, in conjunction with the treating physician, is capable of doing so. An oral revocation is sufficient if the person is currently capable of giving medical directions to health care providers.
- *Where should the form be kept?* The completed medical treatment plan is usually kept in the person's medical files.
- *When does the form go into effect?* Upon completion.
- *Can anyone override or change a medical treatment plan?* Yes. An agent appointed under a special power of attorney for health care has the legal authority to override any previously executed advance directive. According to the proxy statute, any listed proxy with priority would have the legal authority to complete a current medical treatment plan for the person. However, so long as the person is capable of giving current directions to health care providers, then the wishes of that person must be followed.
- *Is a medical treatment plan made in another state valid in Utah?* Probably not. The medical treatment plan is a specific Utah advance directive.

#### **D. EMS/DNR**

- *Who can make one?* Competent adult or legal proxy and attending physician.
- *Is there a form?* Yes. The form must come from the Utah Department of Health through the person's physician.
- *What does the form require?* The person's physician must complete the form issued by the Utah Department of Health. Each EMS/DNR form must have a state of Utah watermark and a unique identifying number provided by the Department of Health. The physician must make the determination that the person is in a terminal condition and then complete the form with the person or the person's legal proxy. The physician must sign and date the form and give the original to the person or the person's proxy. The physician should also complete the authorized EMS/DNR bracelet or necklace and give it to the person or the person's proxy. The physician must then confirm with the Department of Health that the EMS/DNR has been completed and the bracelet or necklace placed with the person and then submit a duplicate original of the form to the Department of Health. If the person is not capable, according to the physician, of giving current medical directions, then the person's proxy may complete the form together with the attending physician. Utah law recognizes the following as legal proxy decision makers in the following order:

- An attorney in fact;
  - Any previously appointed legal guardian of the declarant;
  - The person's spouse if not legally separated;
  - The parents of surviving parent;
  - The person's child 18 years of age or older, or if the person has more than one child, by a majority of the children 18 years of age or older who are reasonably available for consultation upon good faith efforts to secure participation of all those children;
  - By the declarant's nearest reasonably available living relative 18 years of age or older if the declarant has no parent or child living;
  - By a legal guardian appointed for the purposes of this section.
- *Can the form be changed, amended, or revoked?* Yes. If there is any question about the validity of an EMS/DNR form, the EMS personnel must provide emergency medical services to the person as if no EMS/DNR form had been issued.
  - *Where should the form be kept?* The completed form must be sent to the Department of Health. The EMS/DNR is the property of the person and shall be kept with the person's medical record, but is not part of the medical record. To be honored by EMS personnel, the EMS/DNR form must be placed in an unobstructed view above the person on the wall or in close proximity to the head of the bed or the person must be wearing the bracelet or necklace, except in licensed health care facilities.
  - *When does the form go into effect?* Upon completion.
  - *Can anyone override or change a medical treatment plan?* Yes. An agent appointed under a special power of attorney for health care has the legal authority to override any previously executed advance directive.
  - *Is an EMS/DNR made in another state valid in Utah?* No. The EMS/DNR is a specific Utah form promulgated by the Utah Department of Health.
  - *Special Update:* As of March 2003, the Administrative Code rule that regulates the EMS/DNR has been amended to allow for EMS personnel to honor and comply with the Transferable Physician Order for Life Sustaining Treatment Forms (POLST), including a physician order not to resuscitate a patient that does not meet the formalities on the EMS/DNR form. *Who can make one?* Competent adult or legal proxy and attending physician.

#### **E. POLST**

- *Who can make one?* Competent adult or legal proxy and attending physician.
- *Is there a form?* Yes. The form must come from the Utah Department of Health either through the person's physician or a licensed health care facility.

*What does the form require?* The person's physician must complete the form issued by the Utah Department of Health together with the person or the person's legal proxy. The purpose of the form is to provide for the orderly communication and transfer of patient preferences for life-sustaining treatment when a patient transfers from one licensed health care facility to another.

- *Can the form be changed, amended, or revoked?* Yes.
- *Where should the form be kept?* The completed form is part of the person's medical record and should be kept in the medical file or with the person.
- *When does the form go into effect?* Upon completion.
- *Can anyone override or change a medical treatment plan?* Yes. An agent appointed under a special power of attorney for health care has the legal authority to override any previously executed advance directive.
- *Is a POLST form made in another state valid in Utah?* No. The POLST form is a specific Utah form promulgated by the Utah Department of Health.